

### **Remarks**

Applicants respectfully request reconsideration of the application identified above. Claims 1-21 are pending; claims 1, 10, and 14 are amended. The rejections as conceivable applied to the pending claims are respectfully traversed.

Claims 1-30 were rejected under 35 U.S.C. §102(e) as being unpatentable over U.S. Patent Publication 6,406,487, to Brenneman (“Brenneman”). Applicants respectfully traverse this rejection as conceivably applied to claims 1-30.

The Office Action asserts that the Brenneman patent discloses an expandable surgical cannula that can be used for surgery as recited in the presently pending independent claims. However, when read more specifically, the Brenneman patent discloses a stent. A stent is defined as “a small, expandable tube used for inserting in a blocked vessel or other part.” Random House Dictionary, 2010. The Brenneman patent defines the stent as “endoprotheses which can be deployed into the lumen of an artery or vein, a common bile duct, the urethra or other body passageway. Stents may be employed in such passageways for many purposes, including expansion of a lumen, maintenance of the lumen after expansion, and repair of a damaged intima or wall surrounding a lumen.” Col. 1, Lines 14-19. In fact, the stent disclosed in the Brenneman patent is a rolled sheet of material. The stent of the Brenneman patent must be small enough in diameter to fit within an artery, which can have an internal diameter of between 1 and 5 mm. Col. 4, Lines 36-37.

In contradistinction, the cannula of the present invention, as defined in paragraph 0048 of the published application, is a “surgical tube inserted into a body cavity, duct, or tissue to drain fluid, deliver medication, or allow surgery to be performed at a remote site by inserting instruments through the cannula.” In other words, the cannula is a surgical retraction system through which surgery is performed. This is vastly different than a stent. Additionally, throughout the application reference is made to the cannula being a “hollow tube” that is capable of retracting tissue and maintaining an open corridor through which a surgical

operation can be performed. The tube is a solid piece of material, not a sheet of material. The cannula is “floating” because it does not have to be rigidly affixed to the body at the location of insertion. This “floating” enables the surgeon to alter the angle of entry of the instruments during surgery without damaging surrounding tissue. The cannula as recited in the presently pending claims is also much larger than that of the Brenneman patent. For example, the cannula as recited in the presently pending claims must be sufficiently sized to enable an endoscope to pass therethrough. As disclosed in paragraph 65 of the application as filed, the cannula can be sized to expand from 3-4 mm to 20 mm. This is substantially larger than the stent disclosed in the Brenneman patent.

Also, while the Brenneman patent discloses the use of the stent for treating intra-cranial arteries, there is no disclosure for the use of the stent to maintain an opening for surgical procedures. There is nothing established that indicates that the stent is capable of performing the jobs that the claimed cannula can perform. In fact, the stent is an article that can be inserted using the claimed cannula. Thus, the stent is very different and therefore has very different uses from that of the cannula claimed in the presently pending independent claims. Actually, both the size and function of the two devices are very different such that the two devices are not interchangeable. The small stent disclosed in the Brenneman patent cannot be used as a cannula and in would not be able, both because of it's size and the sheet configuration, to function as the floating cannula as recited in the presently pending claims.

Since there is no disclosure in the Brenneman patent of the cannula of the present pending independent claims or the use of the cannula in the manner presently claimed, it is respectfully submitted that the presently pending independent claims are patentable over the Brenneman patent and reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those

references as discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

It is respectfully requested that the present amendment be entered in order to place the application in condition for allowance or at least in better condition for appeal. The application is placed in condition for allowance as it addresses and resolves each and every issue that remains pending. The claims have been amended to clearly distinguish over the prior art. The application is made at least in better condition for appeal as the amendment removes many issues thereby simplifying the issues on appeal. The claims have been amended to more specifically define the invention while raising no new issues that would require any further searching. Rather, the amendments have been made in view of comments made in the Office Action that clearly distinguish the presently pending claims over the cited prior art. Hence, it is respectfully requested that the amendment be entered.

The amendment could not have been made earlier as the amendment further defines the claims over the prior art in accordance with the suggestions made in the Office Action, the suggestions first being made in the outstanding Office Action. Hence, since there remain no further issues to be resolved, it is respectfully requested that the present amendment be entered.

In view of the above Remarks, Applicants respectfully submit that the present application is in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that it would be helpful to resolve any outstanding issues, the Examiner is invited to contact the undersigned.

Respectfully submitted

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